

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 76

An Act to amend and reenact §§ 38.2-513.1, 38.2-604, and 38.2-604.1 of the Code of Virginia, relating to insurance; privacy protection.

[S 240]

Approved March 4, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-513.1, 38.2-604, and 38.2-604.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-513.1. Insurance sales by depository institutions and other lending institutions.

A. No depository institution, in the sale or solicitation of insurance, shall:

1. Reject an insurance policy required in connection with a loan or extension of credit solely because the policy has been issued or underwritten by a person who is not associated with such depository institution or its affiliate;

2. Require a debtor, insurer, agent, or surplus lines broker to pay a separate charge in connection with the handling of insurance required in connection with a loan or extension of credit or other banking product, unless such charge would be required when the depository institution or its affiliate is the licensed agent or surplus lines broker;

3. Use any advertisement that would cause a reasonable person to believe mistakenly that (i) the federal government or the Commonwealth is responsible for the insurance sales activities of, or stands behind the credit of, the depository institution or its affiliate; or (ii) the federal government or the Commonwealth guarantees any returns on insurance products or is a source of payment on any insurance obligation of or sold by the depository institution or its affiliate;

4. Act as an agent unless licensed in accordance with the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title;

5. Pay or receive commissions or other valuable consideration except in accordance with the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title; however, nothing herein shall prohibit the payment of compensation to a person not licensed under Chapter 18 (§ 38.2-1800 et seq.) of this title for the referral of a customer, provided that (i) such compensation is not based on the purchase of insurance by the customer, (ii) such compensation is a one-time, nominal fee of a fixed dollar amount for each referral, and (iii) the referral does not include a discussion of specific insurance policy terms and conditions;

6. Release insurance information of a customer to any person other than an officer, director, employee, agent, or affiliate of the depository institution, for the purpose of soliciting or selling insurance, without the express written consent of the customer. This provision shall not apply to (i) the release of information as otherwise authorized by state or federal law or (ii) the transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or its affiliate, or in connection with a merger with or acquisition of an unaffiliated insurer. A depository institution or its affiliate shall be deemed to be in compliance with this paragraph if it complies with Chapter 6 (§ 38.2-600 et seq.) of this title;

7. Use, disclose, or release health information obtained from the insurance records of a customer for any purpose other than for its activities as a licensed agent or surplus lines broker, without the express written consent of the customer. A depository institution or its affiliate shall be deemed to be in compliance with this paragraph if it complies with Chapter 6 (§ 38.2-600 et seq.) of this title;

8. Extend credit or provide any product or service that is equivalent to an extension of credit, lease or sell property of any kind, furnish any services, or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from the depository institution or its affiliate, or a particular insurer, agent, or surplus lines broker; except that nothing shall prohibit the depository institution or its affiliate from:

a. Engaging in any activity that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System, or

b. Informing a customer that (i) insurance is required in order to obtain a loan or credit approval; (ii) the loan or credit approval is contingent upon the procurement by the customer of acceptable insurance; or (iii) insurance is available from the depository institution or its affiliate;

9. Offer, sell, or require insurance in connection with a loan or extension of credit, when an application for a loan or extension of credit from a depository institution is pending, unless a written disclosure is given to the customer indicating that the customer's choice of an insurer will not affect the credit decision or credit terms in any way; provided, however, that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the scope of coverage

chosen. Any disapproval of an insurer shall be deemed unreasonable if it is not based on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for disapproval of an insurance policy because the policy contains coverage in addition to that required by the creditor. Use of the ratings of a nationally recognized rating service shall not be deemed unreasonable provided such ratings are based on reasonable standards uniformly applied. If an insurer, duly licensed in Virginia, does not possess the required rating of a nationally recognized rating service, no person who lends money or extends credit shall refuse to accept from the insurer a certificate of 100 percent reinsurance issued by another insurer pursuant to § 38.2-136, which does possess the required rating;

10. Sell an insurance policy ~~in connection with any lending of money or extension of credit~~ unless:

a. A clear and conspicuous disclosure is given, in writing, where practicable, to the customer prior to the sale stating that such insurance policy (i) is not a deposit; (ii) is not insured by the Federal Deposit Insurance Corporation or any other federal government agency; (iii) is not guaranteed by the depository institution or, if appropriate, its affiliate or any person soliciting or selling insurance on its premises; and (iv) where appropriate, involves investment risk, including the potential loss of principal, and

b. Written acknowledgment of the disclosure is obtained from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy;

11. Solicit or sell insurance, other than credit insurance or flood insurance, unless such solicitation or sale is completed through documents separate from any credit transactions;

12. Include the expense of insurance premiums, other than credit insurance premiums, title insurance premiums, or flood insurance premiums, in the primary credit transaction without the express written consent of the customer; or

13. Solicit or sell insurance unless (i) its insurance sales activities are, to the extent practicable, physically segregated from areas where retail deposits are routinely accepted; (ii) it maintains separate and distinct books and records relating to such insurance transactions for the three previous calendar years; and (iii) it makes all such books and records available to the Commission for inspection upon reasonable notice.

B. As used in this section:

"Affiliate" means any company that controls, is controlled by, or is under common control with another company.

"Credit insurance" means the lines of insurance defined in §§ 38.2-103, 38.2-108, 38.2-122.1, and 38.2-122.2.

"Customer" means an individual who obtains, applies for, or is solicited to obtain insurance.

"Depository institution" means any bank or savings association.

"Insurance information" means information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of a depository institution or its affiliate.

C. Notwithstanding anything to the contrary, the provisions of this section, except subdivision A. 10., shall also apply to any person who lends money or extends credit and who sells or solicits any insurance as classified and defined in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title in connection therewith. However, this section shall not apply to premium finance companies licensed under Chapter 47 (§ 38.2-4700 et seq.) of this title or agents who extend credit as authorized in § 38.2-1806 to the extent that such premium finance companies or agents are not affiliated with a depository institution.

D. If the customer agrees, the written disclosures and acknowledgements required by subsection A of this section may be provided electronically. Such disclosures shall be provided in a format that the customer may retain and reproduce for later reference. When a purchase of insurance is made by telephone, the disclosures and acknowledgements required by subsection A of this section may be given orally, provided that (i) such disclosures are mailed or provided in electronic form within three working days after the sale, solicitation, or offer of the insurance policy; (ii) documentation is maintained showing that oral acknowledgement was given by the customer; and (iii) a reasonable effort is made to obtain written acknowledgement from the customer.

E. The Commission shall have the power to examine and investigate the affairs of any person to whom this section applies to determine whether that person has violated this section. If a violation of this section is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this chapter.

F. Except as provided for specifically in subsection A, this section shall not prevent or restrict a depository institution or its affiliate from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under state or federal law.

§ 38.2-604. Notice of information collection and disclosure practices.

A. An insurance institution or agent shall provide a notice of insurance information practices to all applicants or policyholders in connection with insurance transactions as provided in this section:

1. In the case of an application for insurance a notice shall be provided no later than:
 - a. At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or
 - b. At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;
 2. In the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:
 - a. Personal information is collected only from the policyholder or from public records; or
 - b. A notice meeting the requirements of this section has been given within the previous twenty-four months; or
 3. In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder or from public records.
- B. The notice required by subsection A of this section shall be in writing or, if the applicant or policyholder agrees, in electronic format, and shall state:
1. Whether personal information may be collected from persons other than an individual proposed for coverage;
 2. The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;
 3. The types of disclosures made under subdivisions 1, 2, 3, 4, 5, 8, 10, and 12 of subsection B and subdivision 2 of subsection C of § 38.2-613 and the circumstances under which such disclosures may be made without prior authorization;
 4. A description of the rights established under §§ 38.2-608 and 38.2-609 and the manner in which those rights may be exercised; and
 5. That information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.
- C. Instead of the notice prescribed in subsection B of this section, the insurance institution or agent may provide an abbreviated notice in writing or, if the applicant or policyholder agrees, in electronic format, informing the applicant or policyholder that:
1. Personal information may be collected from persons other than an individual proposed for coverage;
 2. The information, as well as other personal or privileged information subsequently collected by the insurance institution or agent, in certain circumstances, may be disclosed to third parties without authorization;
 3. A right of access and correction exists with respect to all personal information collected; and
 4. The notice prescribed in subsection B of this section will be furnished to the applicant or policyholder upon request.
- D. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.
- E. An insurance agent shall not be subject to the requirements of this section in any instance where the insurance institution on whose behalf the agent is acting otherwise complies with the requirements contained herein, and the agent does not disclose any personal information to any person other than the insurance institution or its affiliates, or as permitted by § 38.2-613.
- ~~F. An insurance institution or agent that does not disclose, and does not wish to reserve the right to disclose, personal information about policyholders or former policyholders to affiliates or nonaffiliated third parties except as authorized under subsection B of § 38.2-613 may satisfy the requirements under this section by providing notice regarding personal information in the same manner as set forth in subsection C of § 38.2-604.1.~~
- § 38.2-604.1. Notice of financial information collection and disclosure practices.
- A. An insurance institution or agent shall provide clear and conspicuous notice of financial information collection and disclosure practices in connection with insurance transactions as required by subsection B of this section:
1. To an applicant before any financial information is disclosed about that applicant to any nonaffiliated third party, if the disclosure is made other than as permitted under § 38.2-613. For purposes of this subdivision, a notice provided to an employer benefit plan sponsor, group or blanket insurance contract holder, or group annuity contract holder shall satisfy the notice requirements of this subdivision for applicants of such plan, policy, or annuity, provided the insurance institution or agent does not disclose the financial information of those applicants to a nonaffiliated third party, other than as permitted under § 38.2-613;
 2. To a policyholder no later than delivery or issuance of the policy or any other evidence of coverage, or at the later of these events. For purposes of this subdivision, a notice provided to an employee benefit plan sponsor, group or blanket insurance contract holder, or group annuity contract holder shall satisfy the notice requirements of this subdivision for persons covered under such plans,

policies, or annuities, provided the insurance institution or agent does not disclose the financial information of those persons to a nonaffiliated third party, other than as permitted under § 38.2-613; and

3. To a policyholder, other than a policyholder of a title insurance policy, not less than once in ~~any consecutive twelve-month period~~ *each calendar year*. A notice provided to the sponsor of an employee benefit plan or the owner of a group or blanket insurance policy or group annuity contract shall satisfy the notice requirements of this subdivision for persons covered under such plan, policy or contract. For purposes of this subdivision only, "policyholder" does not include a person who owns a policy that is lapsed, expired or otherwise inactive or dormant under the insurance institution's business practices, and with whom the insurance institution has not communicated about the relationship for a period of twelve consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials.

B. Any notice required by subsection A of this section shall be in writing or, if the applicant or policyholder agrees, in electronic format, and shall state:

1. The types of financial information that may be collected;
2. The types of financial information that may be disclosed;
3. The categories of persons to whom financial information may be disclosed; however, when disclosures are made pursuant to subsection B of § 38.2-613, the notice is only required to state that disclosures may be made without prior authorization as permitted by law;
4. If financial information is disclosed pursuant to subdivision C 1 of § 38.2-613, the types of financial information that may be disclosed and the categories of nonaffiliated third parties to whom financial information may be disclosed by contractual agreement;
5. An explanation of the right to direct that financial information not be disclosed to nonaffiliated third parties as provided in § 38.2-612.1, provided that this explanation shall not be required to be given when information is disclosed pursuant to the provisions of § 38.2-613;
6. A description of the policies and practices for protecting the confidentiality and security of financial information;
7. The disclosure required, if any, under Section 603 (d) (2) (A) (iii) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) pertaining to the notices regarding the ability to opt out of disclosure of information among affiliates; and

8. A description of the types of financial information about former policyholders that may be disclosed and a description of the types of affiliates and nonaffiliated third parties to whom financial information about former policyholders may be disclosed; however, when disclosures are made pursuant to subsection B of § 38.2-613, the notice is only required to state that disclosures may be made without prior authorization as permitted by law.

C. An insurance institution or agent that does not disclose, and does not wish to reserve the right to disclose, financial information about policyholders or former policyholders to affiliates or nonaffiliated third parties except as authorized in subsection B of § 38.2-613 may satisfy the requirements of this section by providing a notice, *as set forth in subdivisions A 2 and A 3 of this section*, that:

1. States the foregoing information regarding such insurance institution or agent;
2. Includes the information described in subdivisions B 1 and B 6 of this section; and
3. States that the insurance institution or agent makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

D. An insurance institution or agent may satisfy the notice requirements of subdivision A 1 of this section by providing a short form notice at the same time that the insurance institution or agent delivers an opt out notice as required by § 38.2-612.1. Such a short form notice shall: (i) be clear and conspicuous; (ii) state that the notice prescribed in subsection B of this section is available upon request; (iii) explain a reasonable means by which the applicant may obtain that notice; and (iv) be in writing or, if the applicant agrees, in electronic format. The insurance institution or agent is not required to deliver the notice prescribed in subsection B of this section with its short form notice, provided the insurance institution or agent provides the applicant with a reasonable means to obtain such notice.

E. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. An insurance institution may provide a joint notice from the insurance institution and one or more of its affiliates or other financial institutions, as identified in the notice, if the notice is accurate with respect to the insurance institution and the other institutions.

F. An insurance institution or agent, prior to disclosing financial information to a nonaffiliated third party other than as described in the notice prescribed in subsection B of this section, shall send a revised notice that accurately describes its information collection and disclosure practices. Such notice shall comply with the provisions of subsection B of this section.

G. An insurance institution or agent may satisfy the notice requirements of § 38.2-604 and this section through the use of separate notices or a combined notice.

H. An insurance agent shall not be subject to the requirements of this section in any instance where the insurance institution on whose behalf the agent is acting otherwise complies with the requirements contained herein, and the agent does not disclose any financial information to any person other than the

insurance institution or its affiliates, or as permitted by § 38.2-613.